IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATIONS NO. 193, 207, 208 AND 209 OF 2004.

Criminal Misc. Application No. 193/2004.

Shri Satish P. Dessai. .... Applicant.

Versus

State,
Through the Public Prosecutor. ..... Respondent.

Shri D.Pangam, Advocate under L.A.S. For the Applicant.

Shri S.N. Sardessai, Public Prosecutor for the State/Respondent.

Criminal Misc. Application No. 207/2004

Ibrahim Shaik. .... Applicant.

Versus

State of Goa,
Through the Public Prosecutor ..... Respondent.

Shri J. A.breu Lobo, Advocate under L.A.S. For the Applicant.

Shri S.N. Sardessai, Public Prosecutor for the State/Respondent.

Criminal Misc. Application No. 208/2004.

Santosh Dhawre. .... Applicant.

Versus

State of Goa,
Through the Public Prosecutor. .... Respondent.

Shri J. AbreuLobo, Advocate under L.A.S. For the Applicant.

Shri S.N. Sardessai, Public Prosecutor for the State/Respondent.

Criminal Misc. Application No. 209/2004.

Shivaji Chawan. ..... Applicant.

Versus

State of Goa,
Through the Public Prosecutor. ..... Respondent.

Shri J. Abreu Lobo, Advocate under L.A.S. for the Applicant.

Shri S.N. Sardessai, Public Prosecutor for the State/Respondent.

CORAM: N. A. BRITTO, J.

DATE: 24th SEPTEMBER, 2004.

ORAL ORDER:

These applications are filed under Section 389 of the Code of Criminal Procedure, 1973 by accused Nos.2, 3, 4 and 6 whose appeals namely Criminal Appeals No.12/04 and 19/03 are pending before this Court.

2. The said accused were tried and convicted and sentenced along with accused Nos.1, 5 and 7 in Sessions Case No.37/2000, by the learned Addl. Sessions Judge (II), Panaji and each of them were sentenced under Section 395 I.P.C. To undergo R.I. for a period of six years and to pay a fine of Rs.5000/- in default to undergo R.I. For a further period of one month.

3. The accused Nos.1, 5 and 7 in the said Sessions Case

No.37/2000 filed an appeal before this Court, being Criminal Appeal No.12/2003. The said appeal came to be dismissed by Order of this Court dated 12.9.2003.

4. A.5 Mohansingh Rajput who was accused No.5 in the said Sessions Case and appellant No.2 in Criminal Appeal No.12/2003 preferred Criminal Appeal No.16/2004 before the Supreme Court and the Hon'ble Supreme Court by its Order dated 19.3.2004 directed the said accused No.5 Mohansingh Rajput to be released on bail on his furnishing bail bond to the satisfaction of the concerned Trial Court. The learned counsel appearing for the accused Nos.2, 3, 4 and 6 have submitted before this Court that since the date of the said Order, the said accused No.5 Mohansingh Rajput was admitted to bail by the learned Addl. Sessions Judge (II), Panaji.

5. The contention of the accused in Criminal Appeals No.12/2004 and 19/2003 is that they have served the major portion of their substantive sentence and only about a year and five months or so remain. The accused have further contended that the delay in disposing of the said appeals would render the appeals themselves to be infructuous since the accused having undergone a major part of the sentence imposed on them, and, therefore this would be an appropriate and fit case to suspend the sentence imposed upon the appellants/accused and release them on bail as they have a good case to succeed on merits.

6. As the records and proceedings of the learned Addl. Sessions Judge (II) show, the accused Nos.1, 2, 3, 4 and 6 were arrested on 20.3.2000 and since then they have been in custody. The said accused No.5 Mohansingh Rajput was also arrested on 20.3.2000 but was released on bail on 24.4.2000 but again came to be taken in custody from 27.11.2002, the reasons behind his being taken in custody are unknown for the moment. The learned Addl. Sessions Judge has ordered a set-off to be given to the said accused for the period the said accused had remained in custody during the pendency of the trial.

7. Opposing the suspension of sentence and the grant of bail to the accused/appellants in Criminal Appeals No.12/2004 and 19/2003 Shri Sardessai, the learned P.P. Has submitted that these accused were not on bail during the pendency of the trial and therefore the sentence imposed upon them be not suspended. Shri Sardessai has submitted that both the said appeals could be expedited and decided at an early date. Shri Sardessai has also submitted that the appellants/accused during the time they are serving the sentence would be entitled to parole or furlough and as per his information some of them were indeed released on parole.

8. On behalf of both the parties reliance has been placed on the decision of the Supreme Court in the case of **Bhagwan Rama**

Shinde Gosai and others v. State of Gujarat [(1999) 4 S.C.C. 421] .

9. In the above case, the Supreme Court has observed that when a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of a limited duration cannot be suspended every endeavour should be made to dispose ;of the appeal on merits more so when a motion for expeditious hearing of the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concerned in the matter of suspending the sentence so as to make the appeal right, meaningful and effective. Of course appellate courts can impose similar conditions when bail is granted.

10. As already seen, A.5 Mohansingh Rajput after the sentence imposed upon him by- the learned Addl. Sessions Judge was confirmed by this Court, has been granted bail by the Hon'ble

Supreme Court by Order dated 19.3.2004. The Accused No.5 Mohansingh Rajput was an accused who was earlier admitted to bail on 24.4.2000, but again came to taken into custody on 27.11.2002. The case of Accused No.5 Mohansingh Rajput cannot be compared with the case of the present appellants/accused who at no time had applied for bail during the pendency of the trial and being so, were also not granted bail. It is the submission made on behalf of the said appellants/accused that since A.5 Mohansingh Rajput whose sentence has been confirmed by this Court, has been admitted to bail by the Supreme Court, the present accused would also be entitled to bail suspending their sentence during the pendency of the appeals filed by them.

11. In my view the fact -that the accused are entitled to be released either on parole or furlough cannot come in the way of considering their applications for suspension of sentence and/or admitting them to bail. Since A.5 Mohansingh Rajput whose conviction has been confirmed has been admitted to bail by the Hon'ble Supreme Court, in my view, the appellants/accused whose case is less stronger than the case of A.5 Mohansingh for bail, certainly deserve to be admitted to bail on the ground of parity. At the same time, every endeavour shall also be made to dispose of the appeals filed by them as expeditiously as possible.

12. On behalf of the prosecution, no exceptional circumstances

have been brought to my notice which would require this Court not to admit the said appellants/accused to bail nor any statutory restriction has also been brought to my notice which considerations have been spelt out in the judgment of the Supreme Court in the case of Bhagwan Rama Shinde Gosai (supra) as considerations which would justify the denial of bail to the accused during the pendency of the appeals.

13. In view of the above, the applications of Accused No.2 Ibrahim Shaik, A.3 Santosh Dhawre, A.4 Satish P. Dessai and A.6 Shivaji Chawan who are the appellants in Criminal Appeals No.12/2004 and 19/2003 deserve to succeed. Consequently the sentence imposed upon them by the learned Addl. Sessions Judge by his Order dated 2.12.2002 shall stand suspended. The said accused are admitted to bail and shall be released on bail by the learned Addl. Sessions Judge (II) Panaji on the same terms and conditions by which the Accused No.5 Mohansingh Rajput has been released.

14. Applications granted. Authenticated copy be issued to the parties.

N. A. BRITTO, J.

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